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# PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

A Special Education

Technical Assistance Document



Office of Public Instruction  
Nancy Keenan, Superintendent  
State Capitol  
Helena, Montana 59620

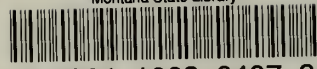
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## INTRODUCTION

The Office of Public Instruction has developed this technical assistance manual to provide a guideline for making decisions about placement in the least restrictive environment. The manual will assist the Individualized Education Program (IEP) team in determining the extent to which the program of services for a student with disabilities can be provided with students without disabilities.

The decisions regarding eligibility, program, and placement must occur in the proper sequence in order to ensure appropriate placement in light of the student's unique needs. The information in this manual is based upon the fact that an analysis of student data and the subsequent identification of the student's needs and eligibility for special education are determined at the Child Study Team meeting. The IEP team then meets to develop, review and revise the IEP and determine an appropriate program of services for the student. Educational placement decisions are made after the IEP has been developed.

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## I. BASIC PRINCIPLES

Educational placement decisions are dependent on the following principles.

### A. Regular Educational Environment.

The educational placement of a student with disabilities must be made in the regular educational environment of the public school which the student would otherwise attend if not disabled unless the nature or severity of the student's disability is such that appropriate educational goals for the student (as contained in the student's IEP) cannot or could not be achieved in the regular educational environment even with the use of supplementary aids and services.

### B. Least Restrictive Alternate Placement.

The selection of a particular alternative educational placement is to be made by determining the least restrictive environment in which the appropriate educational goals for the student could be achieved.

### C. Continuum of Alternate Placements.

If the educational placement is to be made outside of the regular educational environment, it must be made in an alternative instructional setting selected from a continuum of such settings (arrayed from least restrictive to most restrictive) necessary to implement the student's IEP.

### D. Interaction with Students Without Disabilities.

Regardless of the educational placement alternative selected, a student with disabilities must be educated with, and allowed to participate with, students without disabilities in nonacademic and extracurricular activities to the maximum extent appropriate to the needs of the student with disabilities.

### E. Annual Review of Placement.

Educational placement decisions must be made at least annually by a group of persons (including persons knowledgeable about the student, the meaning of the evaluation data and the placement alternatives) who consider carefully broad-based, documented information about the student.

### F. Parental Consent.

Before the initial placement of a student with disabilities can be made, written parental consent must be obtained by the school district.



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## II. DETERMINING EDUCATIONAL PLACEMENT

### A. Procedural Requirement.

In determining the educational placement of a student with disabilities, the IEP team must:

1. review and draw upon documented information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
2. review the completed IEP of the student; and
3. consider any potentially harmful effect of a suggested educational placement alternative on the student or on the quality of services which the student needs.

### B. Age Requirement.

The IEP team must recommend placement in both chronologically age appropriate classroom settings and chronologically age appropriate schools.

### C. Initial Placement.

The IEP team must recommend that the initial placement of a student with disabilities be made in the educational placement which affords more interaction with students without disabilities while still meeting needs identified on the IEP. If the IEP team determines that an initial placement outside of the regular educational environment is necessary, the student with disabilities should be placed in the alternative setting which affords more interaction with students without disabilities.

### D. Noncategorical Placement.

The IEP team may not determine the educational placement of a student based on the category of the student's disability.

### E. Regular Educational Environment Requirement.

The IEP team must determine that the educational placement of the student should be made in the regular educational environment in the school which the student would attend if not disabled, unless the IEP team determines that:

1. the curricula, instructional methodologies or classroom organization needed to support the short-term instructional objectives in the IEP are appropriate and cannot be utilized in a setting where students without disabilities are present for the entire instructional day (exclusive of the provision of related services); and

- 
2. appropriate modifications such as alternative curricula, instructional methodologies or classroom organization, which could be utilized in a setting where students without disabilities are present for the entire instructional day, cannot be identified.

**F. Continuum of Placement Requirement.**

If the IEP team determines that placement of the student should be made outside of the regular educational environment, the IEP team must review the alternative placements in descending order and choose the first alternative placement in which the curricula, instructional methodologies and classroom organization needed to support the short-term instructional objectives contained in the IEP can be implemented.

**G. Homebound/Hospital Placement.**

The IEP team may determine that the placement of a student with disabilities should be made in a program of homebound or hospital instruction only if the student currently has a physical or mental impairment or illness which directly (or because of treatment required) precludes the movement of the student from a hospital or home environment to the general educational environment to the extent that such movement presents a potential harmful effect to the physical or emotional well-being of the student.

**H. Private Residential Placement.**

The IEP team may determine that the placement of a student should be made in a private day or residential program only when the student's instructional programs cannot be established by the school district or through cooperative arrangements with other school districts or public agencies.

**III. RECONSIDERATION OF EDUCATIONAL PLACEMENT**

**A. Current Placement Continued.**

The IEP team may recommend **continued placement in the regular educational environment** only if the IEP team determines that:

1. the current goals and short-term instructional objectives incorporated in the student's IEP are appropriate; and
2. a substantial number of the short-term instructional objectives have not been met; and
3. the curricula, instructional methodologies or classroom organization needed to support the instructional objectives in the IEP are appropriate and cannot be utilized in a setting where students without disabilities are present for the entire instructional day (exclusive of the provision of related services).

**B. Less Restrictive to More Restrictive Placement.**

The IEP team may recommend the placement of a student in a setting **more restrictive than the regular educational environment** only if:



1. a substantial number of the short-term instructional objectives in the current IEP were not successfully achieved; and
2. the short-term instructional objectives that were not attained were, and continue to be, appropriate and are incorporated into the proposed IEP; and
3. the curricula, instructional methodologies and classroom organization needed to support the short-term instructional objectives in the current and proposed IEPs could not be provided in the regular educational environment; and
4. the following factors did not contribute significantly to the student's inability to meet the instructional objectives in the IEP:
  - a. an incompatibility between the student's learning style and the curricula or instructional methodologies used;
  - b. the negative effects of peer interaction;
  - c. the actual unavailability, unreliability or ineffectiveness of needed supplementary aids or services or related services called for in the IEP;
  - d. outside factors related to the home or community environment or to personal health or mental health problems.
5. appropriate modifications such as alternative curricula, instructional methodologies or classroom organization, which could be utilized in a setting where students without disabilities are present for the entire instructional day, cannot be identified.

### **C. More Restrictive to Less Restrictive Placement.**

The IEP team must recommend placement in a **less restrictive environment if the student is currently placed in a more restrictive environment** if:

1. a substantial number of the short-term instructional objectives contained in the current IEP were achieved satisfactorily, and the curricula, instructional methodologies and classroom organization needed to support the short-term instructional objectives in the proposed IEP could be provided in a less restrictive environment; or
2. a substantial number of the short-term instructional objectives contained in the current IEP were not achieved satisfactorily and appropriate modifications of curricula, instructional methodologies and classroom organization needed to support the short-term instructional objectives in the proposed IEP can now be identified and provided in a less restrictive environment.

## **IV. DOCUMENTATION**

### **A. All Placements Requirement.**

The IEP team must provide written documentation that the educational placement of the student meets the criteria set forth in this manual including the following factors:

1. placement determined after the development of the IEP;
2. placement made from a continuum of placement options in the least restrictive environment;

**LEAST RESTRICTIVE ENVIRONMENT (LRE)**

Check **all** sites and settings in which special education and related services will be provided:

- SITE**
- School building student would attend if did not have disabilities
  - Alternative regular school within the district
  - Alternative regular school outside of the district
  - Alternative special school within the district
  - Alternative special school outside of the district
  - Home-based/Homebound
  - Community-based site other than a school or home
  - Residential school
  - Hospital or treatment center
  - Other \_\_\_\_\_

- SETTING**
- Regular education
  - Regular education—Modifications to instructional program
  - Regular education—Supplemental aids and services
  - Special education—Less than 50 percent of day
  - Special education—Greater than 50 percent of day
  - Special education—Individual basis

_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week

3. placement made at least annually;
4. placement made by the appropriate group of persons.

<b>Student's Name</b>	<b>Initials</b>	<b>Birthdate</b>	<b>Sex</b> <input type="checkbox"/> M <input type="checkbox"/> F	<b>Grade</b>	<b>District Resident</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>School</b>		<b>City</b>			
<b>Duration of IEP</b> _____ to _____ mo/day/year mo/day/year		<b>Date IEP Written</b>	<b>IEP Type</b> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Interim		
<b>Total Hours Per Week in Special Education</b>		<b>Total Hours Per Week in Regular Education</b>			

**DOCUMENTATION OF PARTICIPATION IN THIS IEP MEETING**

The following persons, as indicated by their signatures, have participated in the development of this IEP:

Signature	Date	Position
_____	_____	Administrator or Designee
_____	_____	Regular Education Teacher
_____	_____	Special Education Teacher
_____	_____	Parent
_____	_____	_____
_____	_____	_____

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**NOTE:** The sample IEP form addresses these requirements.

**B. Initial Placement Requirement.**

For initial placements, written statements that the following factors were considered and discussed prior to the placement determination must be included in the student's record:

1. the curricula, instructional methodologies and classroom organization needed to support the short-term objectives in the proposed IEP could not be incorporated into the current instructional placement; and
2. modification of curricula, instructional methodologies and classroom organization, which could be utilized in the current instructional setting, cannot be identified; and
3. modification of site would not permit the effective participation of students with disabilities in the current instructional placement.

Explain why options selected above are the most appropriate and the least restrictive.

Describe any other options considered, and provide reasons those options were rejected.

LENGTH  Check here if the student's school day is shorter or longer than peers without disabilities.  
OF DAY/YEAR  Check here if student requires extended school year programming.  
(If either box is checked, additional documentation is required.)

**NOTE:** Written documentation could include intervention documentation gathered in prereferral activities or documentation in the Child Study Team report.

**C. More Restrictive Placement IEP Requirement.**

For placement of a student in an instructional setting more restrictive than the regular educational environment, written documentation must include the determination of whether satisfactory educational achievement is being attained by the student:

1. a significant number of short-term instructional objectives for the student have not been successfully achieved in the current placement;
2. the short-term instructional objectives that were not attained were, and continue to be, appropriate and are incorporated unchanged in the proposed IEP;
3. none of the following factors contributed significantly to the inability of the student to meet the short-term objectives in the IEP:



- a. an incompatibility between the student's learning style and the instructional methodologies or curricula used;
- b. the negative effects of peer interaction;
- c. the actual unavailability, unreliability or ineffectiveness of needed supplementary aids or services or of related services called for by the IEP; and
- d. outside factors related to the home or community environment or to personal health or mental health problems.

**LEAST RESTRICTIVE ENVIRONMENT (LRE)**

Check **all** sites and settings in which special education and related services will be provided:

- SITE
- School building student would attend if did not have disabilities
  - Alternative regular school within the district
  - Alternative regular school outside of the district
  - Alternative special school within the district
  - Alternative special school outside of the district
  - Home-based/Homebound
  - Community-based site other than a school or home
  - Residential school
  - Hospital or treatment center
  - Other \_\_\_\_\_

- SETTING
- Regular education
  - Regular education—Modifications to instructional program
  - Regular education—Supplemental aids and services
  - Special education—Less than 50 percent of day
  - Special education—Greater than 50 percent of day
  - Special education—Individual basis

_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week
_____	hr./week

Explain why options selected above are the most appropriate and the least restrictive.

Describe any other options considered, and provide reasons those options were rejected.

- LENGTH OF DAY/YEAR
- Check here if the student's school day is shorter or longer than peers without disabilities.
  - Check here if student requires extended school year programming.
- (If either box is checked, additional documentation is required.)

**V. CONTINUUM OF ALTERNATIVE PLACEMENTS**

The school district must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for the provision of educational services:

- 
- A. regular classroom instruction for the entire school day, with modifications to the regular instructional program through collaboration/consultation with the special education teacher on a regularly scheduled basis;
  - B. regular classroom instruction for the entire school day, with individualization of instruction through collaboration/consultation on a regularly scheduled basis with the special education teacher and the classroom teacher for part of the school day;
  - C. regular classroom instruction for the entire school day, with individualized instruction services by a special education teacher or related service staff member for part of the school day;
  - D. regular classroom instruction for most of the school day, with individualized instruction or services provided in another setting for part of the school day;
  - E. regular classroom instruction for at least half of the school day, with special education instruction in basic skills areas and/or related services provided in a resource room for half of the school day;

\*(The above alternative placements (A-E) are considered regular class instruction with the use of supplementary aids and services. Students who are handicapped and in need of special education and related services may receive these services in these alternative placements without written documentation of removal from the regular educational environment.

The alternatives below (F-L) are considered alternative placements which constitute removal from the regular educational environment and require specific written documentation. Refer to section IV for specific information.)

- F. resource room instruction for more than half of the school day, with instruction in the regular classroom for part of the school day;
- G. self-contained classroom instruction for most of the school day, with instruction in the regular classroom for part of the school day;
- H. full-time instruction in self-contained classroom, with opportunities for participation with students without disabilities in non-academic and extracurricular activities;
- I. full-time instruction in a self-contained classroom in a regular school;
- J. full-time instruction in a self-contained (separate) school;
- K. instruction provided in hospital or residential facility settings on an individual or group basis;
- L. instruction provided on an individual basis in a home or secure setting.

The school district must also develop additional placement alternatives tailored to the needs of individual or groups of students with disabilities within the overall public school program. These additional placement alternatives may be developed by adapting or modifying existing placement alternatives or by designing and developing new placement alternatives in light of the needs of individual students or groups of students.



# SPECIAL EDUCATION

## LEAST RESTRICTIVE ENVIRONMENT



RESTRICTIVE ENVIRONMENT

School District's

Burden of Proof

Increases

Regular Educational Environment

Educational Continuum

(Less than 50% of school day)

Special Education

(More than 50% of school day)

Regular Class with Supplementary Aids

Resource Room

Self-Contained Class

Special Wing Same Facility

Separate School

24-Hour Residential

Return as soon as possible

Move only as far as necessary to implement IEP

## VI. PARTICIPATION IN REGULAR EDUCATION PROGRAMS

### A. Regular Class Requirement.

The school district must take steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to students without disabilities in the school district, i.e., art, music, industrial arts, consumer and homemaking education and vocational education.

### B. Suggested Steps to Address Requirement.

The steps which should be considered by a school district to make available regular educational program options and services to students with disabilities include:

1. modification of instructional methodologies, staffing patterns, materials and equipment to permit the effective participation of students with sensory impairments or specific learning disabilities;
2. modification of the site, instructional methodology, equipment, staffing patterns and curriculum to permit the effective participation of students with orthopedic impairments or limited motor skills and patterns;
3. individualization of the instructional program, including schedules, curriculum and materials, to permit the effective participation of students with disabilities who would not otherwise be able to participate.

#### DESCRIPTION OF ACTIVITIES WITH STUDENTS WITHOUT DISABILITIES

For a student who is served in a special education setting, check any activities in which the student will be participating with students who do not have disabilities. *If less than 100 percent, indicate time in program.*

- Recess \_\_\_\_\_
- Lunch \_\_\_\_\_
- Music \_\_\_\_\_
- Art \_\_\_\_\_
- Library \_\_\_\_\_
- P.E. \_\_\_\_\_
- Vocational \_\_\_\_\_
- Assemblies \_\_\_\_\_
- Extracurricular \_\_\_\_\_
- Other \_\_\_\_\_

**SPECIAL CONSIDERATIONS:** Describe changes in regular education program that will be made to permit accommodation of learner, e.g., grading, materials, technology, staffing, learner outcomes, curriculum, transportation, discipline.

No special considerations in regular education needed.

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## VII. NONACADEMIC AND EXTRACURRICULAR SERVICES

### A. Regular Activities Requirement.

The school district must provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity to participate in those services.

The school district may provide a nonacademic or extracurricular service to a student with disabilities in a different manner than it is provided to a student without disabilities if such different or separate provision is necessary to provide the student with disabilities with a service or activity which is equally effective to those provided to students without disabilities.

### B. Separate Activities Requirement.

1. Participation of a student with disabilities in a separate nonacademic or extracurricular service or activity (i.e., one in which students without disabilities do not participate) is permitted only when the nature or severity of the student's disability is such that the student is unable to enjoy or otherwise benefit from participation in a service or activity in which students without disabilities participate even with the use of supplemental aids and services.
2. Before providing separate services or activities, the district must consider reasonable modifications to the design of such services or activities in an effort to accommodate all students.

## VIII. NOTICE OF PLACEMENT

### A. When must notice of placement be given?

1. The public school district must provide the parent written notice of the district's proposal or refusal to initiate or change the educational placement of a student with disabilities.
2. The public school district must provide the parent written notice a reasonable time before the district makes a change in the educational placement of a student with disabilities.

### B. What must be included in the notice?

1. The public school district's notice must ensure that the parent has a copy of the brochure entitled "Parental Rights in Special Education."
2. The notice must describe the district's proposed educational placement or change in educational placement.
3. The notice must explain why the district proposes or refuses the change in educational placement, a description of any options the district considered and the reasons why those options were rejected.



- The notice must provide a description of assessment and evaluation procedures and any other factors used as a basis for the district's proposal or refusal to change an educational placement.

**C. In what language must the notice be written?**

- The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication unless it is clearly not feasible to do so.
- If the native language or other mode of communication of the parent is not a written language, the district must provide for the oral translation of the notice and provide written documentation that the parent understands the content of the notice.

*NOTE: The IEP form, when completed appropriately, addresses the requirements of this notice. Whenever the district initially places a student in a special education program or proposes or refuses to change the educational placement of a student with disabilities, the district must complete the IEP a reasonable time, usually ten days, before placement of the student occurs. This may be done by beginning the effective date of the IEP at least 10 days after the date the IEP was written.*

Duration of IEP <u>2/6/91</u> to <u>2/6/92</u> mo/day/year                      mo/day/year	Date IEP Written 1/23/91	IEP Type <input type="checkbox"/> Initial <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Interim
Total Hours Per Week in Special Education	Total Hours Per Week in Regular Education	

**IEP PROCEDURAL SAFEGUARDS**

It is very important that you be aware of and understand that you have the following rights:

- To review all of your child's school records, including those related to the referral and evaluation results.
- To have your child educated in the least restrictive environment that meets your child's educational needs.
- To either approve or disapprove the proposed educational program and placement.
  - If you disapprove the proposed educational program and placement, both you and/or the school may request an impartial hearing.
  - If an impartial hearing is requested and unless you and the school agree otherwise, your child will remain in the present educational placement.
  - In situations where the current placement endangers the health and safety of your child or other children and/or substantially disrupts the educational progress of other children, the school may seek an order from a court for an interim placement.

**PARENTAL CONSENT**

Sign the appropriate statement:

I have had the opportunity to participate in the development of this Individualized Education Program and **approve** of its content and this educational placement/service for my son/daughter. I also understand my parental rights.

\_\_\_\_\_  
Parent/Guardian

\_\_\_\_\_  
Date

I have had the opportunity to participate in the development of this Individualized Education Program and I disagree with the Individualized Education Program and **do not approve** the educational placement. I also understand my parental rights.

\_\_\_\_\_  
Parent/Guardian

\_\_\_\_\_  
Date

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## IX. DEFINITIONS

### A. Achieved Satisfactorily.

The term “achieved satisfactorily” means for a student who:

1. has never been enrolled in a public or private elementary school, performance at or not substantially below expected developmental levels for a student of the same age; (preschool)
2. is currently enrolled in a public or private elementary or secondary school but not receiving special education and related services or performance at or not substantially below expected learner outcomes (or other educational standards) established for grade and/or age level;
3. is currently receiving special education and related services, substantial progress toward the attainment of the goals in the IEP, as evidenced by the accomplishment of at least a majority of the short-term objectives established in each goal area.

### B. Chronologically Age Appropriate.

The term “chronologically age appropriate” means that any handicapped student is no more than four years older or younger than the students without disabilities.

### C. Education.

The term “education” means for a student who:

1. has never been enrolled in a public or private elementary school, the development of a wide range of cognitive, affective and psychomotor skills, including concept formation, expressive and receptive language, social and play skills, and motor skills; (preschool)
2. is currently enrolled in a public or private elementary or secondary school but not receiving special education and related services or specific learner outcomes or other educational standards established for grade and/or age appropriate school performance; and
3. is currently receiving special education and related services, the goals and objectives in the student’s current IEP.

### D. Equally Effective.

In order to be “equally effective,” a nonacademic or extracurricular service or activity must afford a student with disabilities an equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement.



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**E. Harmful Effects.**

The term “harmful effects” means a severe impairment of the student’s ability to attain the goals and objectives in the IEP which cannot be prevented or diminished by actions taken by school officials.

**F. Maximum Extent Appropriate.**

The term “maximum extent appropriate” means the maximum integration of students with disabilities in the instructional and non-instructional setting consistent with the avoidance of harmful effects.

**G. Nonacademic and Extracurricular Services.**

The term “nonacademic and extracurricular services and activities” includes the following services or activities when provided by a school district:

1. counseling services;
2. athletics;
3. transportation;
4. health services;
5. recreational activities;
6. referrals to agencies which provide assistance to persons with disabilities;
7. meals;
8. assistance provided by district in making outside employment available;
9. recess periods.

**H. Nature or Severity of Disability.**

“Only when the nature or severity of the disability is such” means that factors such as inappropriate goals or objectives or evaluation criteria or procedures, curriculum, instructional methodology, classroom organization, outside factors related to the home or community environment, or personal health or mental health problems have not contributed significantly to an identified failure to achieve education satisfactorily.

**I. Placement.**

The term “placement” means the overall educational environment (site or sites) in which special education and related services are provided to a student with disabilities and includes but is not limited to the student’s instructional placement. The term “instructional placement” means the setting or settings in which special education services are provided.

**J. Regular Class.**

The term “regular class” means a specific instructional grouping within the regular educational environment.

**K. Regular Educational Environment.**

The term “regular educational environment” means the regular class and any other instructional setting in which both regular and special education services may be provided to all students, but does not include

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a class or other instructional setting in which the selection of students without disabilities is based on educational disadvantage.

**L. Removal of Student with Disabilities.**

The term “removal of students with disabilities from the regular educational environment” means the discontinuation or repeated interruption of any instructional services currently provided in the regular educational environment.

**M. Supplementary Aids and Services.**

The term “supplementary aids and services” means itinerant instruction, peer tutoring, instructional support provided by aids and paraprofessional personnel, technology, and other instructional and instructional support services provided in conjunction with regular class.

**X. SELF-MONITORING**

- A. The placement decision was made by a group of persons including a person who is knowledgeable:
1. about the student;
  2. the meaning of the evaluation data;
  3. the placement options.
- B. The placement decision was made after the development of the IEP including annual goals and short-term objectives.
1. The placement provides alternatives to the extent necessary to implement the student’s IEP.
  2. The placement provides the variety of regular educational programs and services available to students without disabilities.
- C. For initial placement, the placement was made within 30 days of the Child Study Team meeting.
- D. The placement was reviewed at least annually.
- E. The placement is in the neighborhood school. If the placement is not in the neighborhood school, documentation supports the alternative placement.
- F. The placement is as close to the student’s home as possible.
- G. The placement considers any potential harmful effects on the student or on the quality of services the student needs.
- H. The placement provides opportunity to participate in nonacademic and extracurricular services and activities with peers without disabilities to the maximum extent appropriate.
- I. The parents have signed a statement giving consent for placement.

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## XI. FEDERAL REGULATIONS

- (1) Placement is determined by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options. [300.533(a)(3)]
- (2) Student with disabilities must, to the maximum extent appropriate, be educated with children who are not handicapped. [300.550(b)(1)]
- (3) That special classes, separate schooling or other removal of student with disabilities from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services, cannot be achieved satisfactorily.” [300.550(b)(2)]
- (4) Each LEA and SOP shall make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. [300.551(b)(2)]
- (5) A continuum of alternative placements (including instruction in regular classes, special classes, home instruction and instruction in hospitals and institutions) appropriate to the needs of individual children (as outlined in the IEP) must be available for students with disabilities who are not placed in the regular education environment. [300.551(b),552(b)]
- (6) A student with disabilities shall be placed in the school which the child would have attended otherwise if the child were not handicapped unless the student’s IEP requires a different placement which, in any event, shall be as close as possible to the student’s home. [300.552(a)(3), (c)]
- (7) Placement decisions shall be based on the IEP of the child. [300.552(a)(2)]
- (8) In making the placement determination, the group of persons must draw upon documented information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior and give consideration to any harmful effect of a proposed placement on the child or on the quality of services needed. [300.533(a)(1),(2),552(d)]
- (9) Placement shall be determined at least annually. [300.552(a)(1)]
- (10) Each student with disabilities shall participate in nonacademic and extracurricular services and activities with non-student with disabilities to the maximum extent appropriate to the needs of the child. (300.306,553)
- (11) Nonacademic and extracurricular services and activities shall be provided in a manner which affords student with disabilities an equal opportunity to participate. [300.306(a)]
- (12) Each LEA and SOP shall take steps to ensure that its student with disabilities have available to them the variety of educational programs and services available to non-student with disabilities in the area served by the LEA or SOP, including art, music, industrial arts, consumer and homemaking education and vocational education. (300.305)



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- (13) Each SEA will make arrangements with public and private institutions to ensure that the [least restrictive environment] requirements at 300.550 are met. (300.554)
  - (14) Each SEA must carry out activities to ensure that teachers and administrators in all LEAs and SOPs are fully informed about their responsibilities for implementing [least restrictive environment requirements] 300.550. (300.555)
  - (15) Each SEA must carry out activities to ensure that teachers and administrators in all LEAs and SOPs are provided with technical assistance and training necessary to assist them in this effort. (300.555)
  - (16) Each State agency must carry out activities to ensure that [least restrictive environment requirements] 300.550 is implemented including:
    - (a) the review of placement justifications when evidence suggests that 300.550 [least restrictive environment requirement] is not implemented; and
    - (b) assistance in planning and implementing any necessary corrective actions resulting from monitoring activities. (300.556)
  - (17) If an SEA provides special education and related services to student with disabilities directly, by contract or through other arrangements, the services shall be provided in accordance with the [least restrictive environment] requirements of 300.550-556. (300.361)

## **XII. STATE REGULATIONS**

### ***A. Excerpts from Montana Laws and Rules Special Education Reference Manual.***

#### 2.1 Special Education to Comply with Board Policies (20-7-402)

(1) The conduct of special education programs shall comply with the policies recommended by the Superintendent of Public Instruction and adopted by the Board of Public Education. These policies shall assure and include but are not limited to:

- (a) placement of handicapped children in the least restrictive alternative setting;
- (b) due process for all handicapped children, including the appointment of a surrogate parent if necessary;
- (c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;
- (d) comprehensive evaluation for each handicapped child; and
- (e) other policies needed to assure a free and appropriate public education.

(2) The Superintendent of Public Instruction shall promulgate rules to administer the policies of the Board of Public Education.

#### 5.1 Regular Classes Preferred -- Obligation to Establish Special Education Program (20-7-411)

(1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not

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handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and 18, inclusive.

(3) On or before September 1, 1990, the board of trustees of each elementary district shall provide or establish and maintain a special education program for each handicapped preschool child between the ages of 3 and 6, inclusive.

(4) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

#### 5.1.1 Policy Statement

(1) The policy that all handicapped children in Montana are entitled to a free appropriate education between the ages of 6 and 18, inclusive, as stated in 20-7-411, MCA, applies to all public agencies within the state.

(2) Each public agency will ensure that handicapped children participate, to the maximum extent possible, with nonhandicapped children in nonacademic and extracurricular services and activities. These services and activities may include counseling, athletics, transportation, health, recreational, special interest groups or clubs, referral and employment assistance, meals and recess.

(3) When selecting the appropriate placement in the least restrictive environment, each public agency must ensure that the placement is:

(a) as close as possible to the child's house;

(b) in the school which the child would attend if not handicapped unless the individualized education program requires some other arrangement; and

(c) consideration is given to any potential harmful effect on the child or on the quality of needed services.

(4) A handicapped child is placed in a special class only when the nature of the severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

#### 7.1 Services in General (10.16.1301)

(1) Individual assistance for a handicapped student shall be accomplished through utilization of the least restrictive educational alternative. Under the least restrictive educational alternative, handicapped students shall be educated, whenever possible, with students who are not handicapped. Removal of handicapped children from the regular educational environment (e.g., placement in special classes housed in separate school facilities) will only occur when the nature or severity of the handicap is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.

(2) To meet the needs of each handicapped person, districts should afford children access to a variety of instructional and service options. Services will be developed as availability of qualified staff permits. Small school districts with a minimal number of handicapped students should seek to serve those students with programs and services coordinated with nearby districts and/or through special education cooperatives.

#### 7.2 Resource Instruction and Service (10.16.1302)

(1) Instruction from a resource service requires that the special education teacher be available to provide direct service to handicapped students who are enrolled in the regular instructional program. Resource instruction may be provided by a resource teacher working with handicapped students in the regular classroom



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or by removing the students to a separate resource room for some part of the school day. A student should not be removed from the regular classroom to a separate resource room unless the move is essential in meeting the specific needs of a child. The resource teacher is responsible for ongoing consultation and communication with the child's regular classroom teacher(s) regarding specific needs and recommendations of materials and instructional procedures and to exchange information for parent conferences. The resource teacher and the regular instructional staff should coordinate their efforts and expertise frequently and systematically to best serve the student.

(2) The special education teacher assigned to a resource program is responsible for assisting in child study team assessment, translating strategies, preparing materials, providing instruction, maintaining appropriate records of progress, and conferring with parents and regular teachers. The resource teacher should periodically follow up on children who have been phased out of special education programs to determine their progress in the regular classroom.

(3) Space and equipment needed to support the resource service must be provided.

#### 7.5 Resource Service is Non-Categorical (10.16.1305)

A resource service may serve a combination of handicapping conditions as long as the needs of the children assigned to the service are appropriately met through this option.

#### 7.7 Self-Contained Instruction (10.16.1307)

(1) Service through self-contained instruction results when the child study team determines that a child exhibits an intellectual, adaptive, learning, social, and/or emotional impairment so severe that removal from the regular instructional program for more than 50 percent of the school day is essential and that education in a regular instructional program with the assistance of resource instruction will not provide an appropriate education.

(2) The teacher in a self-contained program is responsible for assisting in the child study team assessment, translating assessment findings into appropriate educational objectives, and implementing and evaluating instructional procedures necessary to achieve these objectives. To ensure that capable students have an opportunity to return to the regular instructional program, it is important that a thorough system of referral, assessment, programming, and termination be developed. Communication with the regular instructional staff, particularly with the regular classroom teacher, is of utmost importance and requires careful planning by all concerned.

(3) The age range of children assigned to a self-contained classroom should be considered in establishing the composition of the class. Chronological age range greater than six years is not recommended. The actual range should be determined by the school administration utilizing the recommendations of the child study team.

(6) Self-contained service is non-categorical and a self-contained service may serve a combination of handicapping conditions as long as the needs of the children assigned to the service are appropriately met through this program option.

(7) Space and equipment needed to support the self-contained class must be provided. The classroom should be in a school building and should be comparable to regular classrooms in that school district. Handicapped children shall not be discriminated against because of the lack of appropriate facilities. Any deviation of special education classrooms must receive approval from the Superintendent of Public Instruction.

(8) The length of the school day follows provisions established in 20-1-302 unless the child, for physical reasons, cannot attend for the standard school day. This determination will be made by the child study team.

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### 7.8 Services to Homebound and/or Hospitalized Students (10.16.1308)

(1) Services to any homebound and/or hospitalized students may be provided when a medical doctor verifies that a student is hospitalized or provides medical documentation and reasons for the student's need to remain out of school.

(2) When the child study team has completed a comprehensive education evaluation and determined the child to be handicapped, the service may be extended to the student.

### 7.10 Out-of-District Services (10.16.1310)

(1) If a school district is unable to provide services for its resident handicapped students or unable to provide services through cooperative services, the school district may have to use out-of-district placement. The decision to place a child out-of-district must be recommended by the resident district child study team and approved by the resident district board of trustees. Placement made independently of the public school by the parents and/or other agencies relieves the public school of all financial obligations.

(2) When a child is handicapped to such a degree that a totally controlled environment is needed, residential school placement may be essential. Room and board and out-of-state tuition costs are considered allowable costs in the district's special education budget. The public school is only responsible for room and board and educational costs. Other services such as psychiatric therapy and/or medical treatment must be deleted from the special education costs and assumed by parents and/or other agencies. An out-of-district placement must be approved by the Superintendent of Public Instruction.

(3) A district must first make a reasonable attempt to secure and utilize in-state resources before out-of-state placement will be approved.

(4) It is the resident district's responsibility to convene the child study team and set the time and place for conducting a review of the child's needs and educational placement. The receiving district is responsible for providing program monitoring and assisting the resident district with conducting an annual review of the

## ***B. Excerpts from Montana State Plan 1990-1992.***

### **VI. Least Restrictive Environment**

#### **A. General**

##### **Programs, Services, Activities and Resources**

Special education service delivery patterns vary extensively throughout Montana. The urban school districts tend to have more extensive services available within the school systems themselves and within the community. The more rural districts in the state rely heavily on itinerant/consultative services provided through individual contracts with private providers or through regional special education cooperative agreements. All districts have available to them direct or indirect services such as (1) screening and identification, (2) evaluation, (3) resource room instruction, (4) self-contained classes, (5) speech therapy, (6) related services including occupational therapy, physical therapy and counseling, and (7) transportation. Generally, rural districts have a special education teacher in the district, but must contract individually for other services from regional providers.

The passage of House Bill 449 in the 1989 State Legislature strengthened the Special Education Cooperative service delivery model. Most of the 27 cooperatives exist in very rural regions of the state allowing small rural districts to provide handicapped students full educational opportunities in their regions through shared services.



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## C. Policy Statements

(1) Each public agency will ensure that handicapped children participate, to the maximum extent possible, with non-handicapped children in nonacademic and extracurricular services and activities. These services and activities may include counseling, athletics, transportation, health, recreational, special interest groups or clubs, referral and employment assistance, meals and recess.

(2) When selecting the appropriate placement in the least restrictive environment, each public agency must ensure that the placement is:

(a) As close as possible to the child's house;

(b) In the school which the child would attend if not handicapped unless the individualized education program requires some other arrangement; and

(c) Consideration is given to any potential harmful effect on the child or on the quality of needed services.

(3) The public agency will ensure that all placement decisions are based upon the student's IEP and that the placement decision is made in conformity with the least restrictive environment rules in federal regulations 34 CFR 300.500-300.554.

(4) A handicapped child is placed in a residential setting only when the nature and severity of the handicap requires a totally controlled environment. A totally controlled environment refers to one or more of the following conditions:

(a) A 24-hour program of care and instruction is required;

(b) Extreme degrees of consistency of approach between living and school environments are required;

(c) The student requires total immersion in a treatment program in order for progress to occur; or

(d) An appropriate placement cannot be provided in a day placement even with supportive aids and services.

(5) For a student placed in out-of-district placement, the public agency must assure that procedures are instituted to ensure that to the maximum extent appropriate this handicapped student will be educated in the least restrictive manner and will be educated with students who are not handicapped. This policy applies to public and private placements made by the public agency.

(6) A regulation review will delete the parenthetical statement in 10.16.130(2), which reads as follows:

(Every district cannot be expected to have all the necessary resources to develop as many services as are necessary to meet the needs of handicapped children in the district. Services will be developed as availability of qualified staff permits.)

## D. Interagency Agreements

The Montana Office of Public Instruction has developed interagency agreements with the following state agencies:

1. Department of Institutions

2. Department of Family Services

3. Board of Public Education

4. Department of Social and Rehabilitation Services

5. Department of Health

The purpose of the interagency agreements is to define responsibilities and roles of the agencies in serving handicapped children and to provide a mechanism for dispute resolution if it should occur. The interagency agreements are included as part of Appendix C.

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E. Monitoring and Training Activities

The SEA shall monitor all educational programs for the handicapped to ensure compliance with state and federal mandates. This includes the review of and assurance from private and public institutions to implement the requirements of serving children in the least restrictive environment.

Through the distribution of rules and regulations, the on-site monitoring reviews, inservice training activities and SEA technical assistance efforts, LEAs are informed of their responsibilities regarding the requirements of least restrictive environment.

To ensure LEA compliance with existing state and federal laws and regulations, the on-site monitoring teams will conduct random indepth reviews of individual CST reports and determine if, in fact, criteria established have been met. Determination of compliance will be made by the monitoring team based on (1) review of the CST report. (2) review of appropriate program availability within the district, (3) on-site observation of the child within the educational setting, and (4) the services provided.

Upon determination that a child is not receiving appropriate services or placement does not conform to criteria of the least restrictive environment, the monitoring team shall:

(1) Notify the LEA or SOP in writing that either appropriate services or placement in the least restrictive environment do not comply with state and federal regulations.

(2) Provide the LEA or SOP with written documentation of areas of non-compliance and suggest steps by which the child study team might comply with stated regulations. It is neither the intent nor the desire of the monitoring team to establish specific objectives, services or specific placement of the child, only to direct the child study team to comply with state and federal law.

Upon receiving written notification of discrepancies in services or placement in the least restrictive environment, the Office of Public Instruction will notify the LEA or SOP of the necessary corrective actions, timelines and sanctions if appropriate.

Further assurance by LEAs of the establishment of least restrictive environment requirements is afforded in the Part B application. The Office of Public Instruction requires a "sign-off" by the LEA assuring that the least restrictive environment is met. This "sign-off" must be noted before Part B dollars are released by the Office of Public Instruction to any LEA.

The Office of Public Instruction provides materials for LEAs on the conduct of the CST/IEP, the provision of services in the least restrictive environment and placement procedures. The SEA also disseminates information on least restrictive environment requirements at an annual statewide monitoring review workshop, the state directors of special education workshop, due process hearing officers workshops and numerous Montana Laws and Rules for Special Education workshops. The SEA also presents annually at the statewide MEA, CEC and Early Childhood Conferences.

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